Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
21541-000310

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature_____ Typed or printed name _____	Application Number 10/708,503	Filed March 8, 2004
	First Named Inventor Li-Sheng Chen	
	Art Unit 2454	Examiner Wen Tai Lin

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number   39,626 .

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

/Melvin D. Chan/
Signature

Melvin D. Chan
Typed or printed name

408-701-0035
Telephone number

November 21, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐   *Total of _____ forms are submitted.

United States Patent and Trademark Office

Application No.:   10/708,503

Confirmation No.:   2502

Customer No.:   51111

Docket No.:   21541-000310

Commissioner for Patents
POB 1450
Alexandria, VA 22313-1450

Reasons for Pre–Appeal Brief Review Request

Dear Commissioner:

Applicants request a pre–appeal brief conference review because the rejections of record are clearly based on legal and factual error.

Allowable Claims 50–55 and 61–63

In the advisory action, the examiner withdrew the section 112, first paragraph rejection to claims 50–55 and 61–63. Since these claims were not otherwise rejected in the final rejection, these claims should be allowable.

However, in the advisory action, the examiner grouped claims 61–63 with other claims rejected as being unpatentable over Lee. The examiner never rejected these claims for this reason before. Applicants believe this is a *new ground for rejection* and the examiner should send a new nonfinal rejection. Otherwise, if the examiner made a mistake in the grouping these claims, applicants would appreciate the sending of another advisory action clarifying the record.

Claims 45–47

The examiner should withdraw the section 112, first paragraph rejections for claim 45–47. Applicants note that paragraph 1 of the specification states:

This application claims priority to U.S. provisional patent application number 60/534,035, filed December 30, 2003, entitled "Traffic Management in Digital Signal Processor," *the entire disclosure of which is incorporated by reference for all purposes, along with the references cited in this application.*

Therefore, applicants are explicit in their incorporation by reference of the information on various DSPs and DSP families from Texas Instruments, Analog Devices, and Motorola.

Furthermore, it is not correct to require explicit incorporation by reference features and knowledge that are common to one of skill in the art. The examiner's standard is tantamount to forcing an engineer to incorporate by reference all the engineering textbooks the engineer used while in engineering school.

For example, using the term "transistor," one of skill in the semiconductor art should recognize this to be a device having three terminals, whether of not explicitly stated in the specification; incorporation by reference would not be required. Similarly, this is the case for the term "DSP," especially for one of skill in the DSP area.

For at least these reasons, the examiner should withdraw the rejection of claims 45–47.

Section 103 Rejection

The examiner has not made a *prima facie* showing of obviousness for a number of reasons:

Argument 1

See argument 1 details on pages 11–12 of applicants' November 11, 2008 response. In brief, the prior art do not show or suggest using DSP, and in fact Lee *teaches away* from using a DSP. For at least this reasons, the claims should be allowable.

Argument 2

See argument 2 details on page 12 of applicants' response. Lee does not use a DSP. As stated there are many benefits to performing network management and processing using a DSP (e.g., lower cost) than using a custom integrated circuit. The invention, as described in the specification, enables one of skill in the art to practice the invention. The specification discusses specific techniques on how to perform network management and processing in a DSP.

Argument 3

The prior art does not show of suggest a technique using four cores residing on the same intergrated circuit. See argument 3 details on pages 12–13 of applicants' response.

Argument 4

See argument 4 details on pages 13–14 of applicants' response. The prior art does not perform congestion and scheduling in separate cores as recited in the claims. This is because in Lee, congestion and scheduling are dependent on each other, and these cannot be put in different cores. And this is a reason why Lee does not suggest four cores (further supporting applicants' argument 3).

Argument 5

See argument 5 details on page 14 of applicants' response. The prior art also does not perform the same processing, "the third core processes data generated by the second core," as in the claim 1. Firstly, Lee does not perform congestion and scheduling in separate cores for the reasons given in argument 4. Further, Lee describes scheduling is performed *before* congestion, which completely different from what is claimed.

Therefore, all claims should be allowable.

Respectfully submitted,

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